

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERIK C. LOZOTT,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

CASE NO. C14-5283 BHS

ORDER GRANTING
DEFENDANT'S UNOPPOSED
MOTION TO DISMISS

This matter comes before the Court on Defendant United States Postal Service's unopposed Motion to Dismiss (Dkt. 6).

On January 15, 2014, Plaintiff Erik C. Lozott ("Lozott") filed a Small Claims Notice of Claim against the U.S. Postal Service – Post Office, 14831 Burley Ave., Burley, WA 98322, claiming that "services" were "not properly performed." Dkt. 1, Exh. A. On April 4, 2014, the Government removed the matter to this Court. Dkt. 1.

On May 2, 2014, the Government filed a motion to dismiss based on sovereign immunity and failure to exhaust. Dkt. 6. Lozott failed to respond, which the Court considers an admission that the Government's motion has merit. Local Rule CR 7(b)(2).

1 In this case, the Government's motion has merit. First, the United States is not
2 liable for "any claim arising out of the loss, miscarriage or negligent transmission of
3 letters or postal matter." 28 U.S.C. § 2680(b); *Anderson v. United States Postal Service*,
4 761 F.2d 527, 528 (9th Cir. 1985). Reading the complaint in the light most favorable to
5 Lozott, it appears that his claim is based on the negligent transmission of his mail.
6 Therefore, the Court **GRANTS** the Government's motion because the Government is
7 entitled to sovereign immunity from this claim.

8 Second, Plaintiff has failed to properly exhaust his claim. "A tort claim against
9 the United States shall be forever barred unless it is presented in writing to the
10 appropriate Federal agency within two years after such claim accrued." 28 U.S.C. §
11 2401(b); *see also Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995). Plaintiff has
12 failed to allege or show that he has exhausted his administrative remedies by presenting a
13 claim to the appropriate federal agency. Therefore, the Court also **GRANTS** the
14 Government's motion on the issue of failure to exhaust.

15 **IT IS SO ORDERED.**

16 Dated this 2nd day of June, 2014.

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19 BENJAMIN H. SETTLE
20 United States District Judge
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